

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT/SUPERIOR COURT
CAUSE NO. 490110606M122602

STEVE CARTER,
ATTORNEY GENERAL OF INDIANA,)
)
Petitioner,)
)
v.)
)
EVERDRY MARKETING AND)
MANAGEMENT, INC.)
)
Respondent.)

FILED

112

JUN 02 2006

Doris Ann Scheller
CLERK OF THE
MARION CIRCUIT COURT

PETITION TO ENFORCE CIVIL INVESTIGATIVE DEMAND

Attorney General Steve Carter, by Deputy Attorneys General Justin G. Hazlett and Eric Jackson, petitions the Court pursuant to Indiana Code § 4-6-3-6 for an order to enforce his Civil Investigative Demand.

RESPONDENT

1. Respondent, Everdry Marketing and Management, Inc. ("Everdry"), is an Ohio corporation with an Ohio principal address of 365 Highland Road E., Macedonia, Ohio.

FACTS

2. During the times relevant to the activity being investigated by the Attorney General, Respondent engaged in the business of selling franchises to install waterproofing systems based upon a patented system owned by Everdry. Upon information and belief, one of the terms upon which Everdry granted franchises to franchisees required that the franchisees offer "lifetime warranties" to purchasers of the residential waterproofing systems installed by the franchisees.

At least two of Everdry's Indiana franchisees have closed business and are no longer honoring the warranties sold to Indiana consumers.

3. From information provided by consumer complaints referring to Respondent, and from an initial investigation conducted by the Attorney General, the Attorney General has reason to believe that Respondent is in possession, custody, or control of documentary material, and has knowledge of facts, that are relevant to the Attorney General's investigation to determine whether Respondent has violated the Indiana Deceptive Consumer Sales Act, Ind. Code §§ 24-5-0.5-1 through -12.

4. On March 10, 2006, Attorney General Steve Carter issued his Civil Investigative Demand number 06-035 ("CID 06-035") to Respondent. CID 06-035 demanded that Respondent respond to interrogatories and requests for production on or before March 31, 2006, or "by such date as may be agreed upon." A true and accurate copy of CID 06-035 is attached hereto as Exhibit A.

5. On March 31, 2006, the Attorney General received a letter from Respondent's attorney requesting a meeting to discuss the Attorney General's investigation. The Attorney General accommodated Respondent's request, agreeing to meet with Respondent and its attorney on May 3, 2006. The Attorney General also agreed to a corresponding, but unspecified, delay in Respondent's response to CID 06-035. The Attorney General met with Respondent and its attorney on the scheduled date of May 3, 2006.

6. On May 9, 2006, the Attorney General sent a letter to Respondent's attorney memorializing the Attorney General's understanding of the terms of the parties' discussion regarding Respondent's obligations toward certain Indiana consumers. On May 26, 2006 the

Attorney General received Respondent's letter declining to agree to the terms outlined in the May 9 letter.

7. On May 26, 2006, the Attorney General sent a letter to Respondent and Respondent's attorney advising Respondent that more than two months had elapsed since the Attorney General issued CID 06-035, and demanding a response to it no later than 12:00 p.m. May 31, 2006.

8. On May 31, 2006, the Attorney General received a fax from Respondent's attorney indicating that Respondent does not intend to respond to CID 06-035.

9. As of the date of the Attorney General's filing of this petition, Respondent has in bad faith failed to respond to CID 06-035.

10. Under Ind. Code § 4-6-3-6, if a person fails to obey a Civil Investigative Demand the Attorney General may file an application to enforce the Demand with a Circuit or Superior court in the county of the person's residence or principal place of business in Indiana.

RELIEF


Since the Attorney General has issued his CID 06-035 as part of his duties to protect consumers by enforcing Indiana consumer protection law, the Attorney General requests that the Court set this matter for hearing at the Court's earliest convenience.

The Attorney General further requests that the Court order Respondent to respond completely to CID 06-035 by answering fully and truthfully the interrogatories and requests for production propounded in the civil investigative demand, award reasonable expenses to the Office of the Indiana Attorney General for the Attorney General's costs in petitioning to enforce CID 06-035, and award such further relief as is just and proper.

Respectfully submitted,

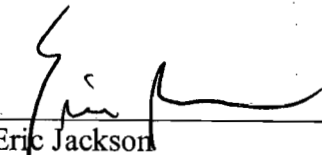
STEPHEN CARTER
Attorney General of Indiana

By:



Justin G. Hazlett
Deputy Attorney General
Atty. No. 22046-49

By:



Eric Jackson
Deputy Attorney General
Atty. No. 19415-49

OFFICE OF THE INDIANA ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

IN RE: EVERDRY MARKETING AND,
MANAGEMENT, INC.

Respondent.

)
) CIVIL INVESTIGATIVE
) DEMAND NO. 06-035
)

THE ATTORNEY GENERAL TO:

Everdry Marketing and Management, Inc.
365 Highland Rd E
Macedonia, OH 44056

CIVIL INVESTIGATIVE DEMAND

Attorney General Steve Carter, pursuant to the provisions of Indiana Code § 4-6-3-1 *et seq.*, states that he has reasonable cause to believe that Everdry Marketing and Management, Inc. may be in possession, custody, or control of documentary material, or may have knowledge of a fact that is relevant to an investigation being conducted by the Consumer Protection Division. This investigation seeks to determine whether Everdry Marketing and Management, Inc. has violated:

Indiana's Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, by misrepresenting the characteristics or benefits of warranties offered to consumers purchasing Everdry waterproofing systems.

The Attorney General demands that Everdry Marketing and Management, Inc., its representative, or its agent respond to this Civil Investigative Demand by providing answers to the attached Interrogatories and Requests for Production.

Everdry Marketing and Management, Inc. is to respond in writing to the interrogatories and requests for production propounded herein by March 31, 2006 or by such



date as may be agreed upon. It may direct its response, as well as any questions regarding this

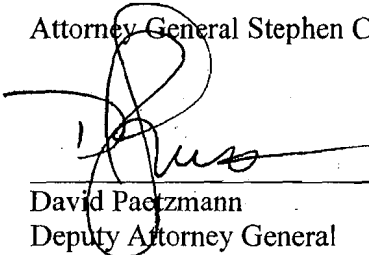
Civil Investigative Demand to Deputy Attorney General Justin G. Hazlett at:

Office of the Attorney General, Consumer Protection Division
302 West Washington Street
Indiana Government Center South, 5th floor
Indianapolis, Indiana 46204
Tel.: (317) 232-0167
Fax: (317) 233-4393

WITNESS my hand and seal of the Office of the Attorney General, State of Indiana, this

10th day of March, 2006.

Attorney General Stephen Carter


by: David Pachtzmann
Deputy Attorney General

Office of the Attorney General
302 West Washington Street
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204
(317) 232-0167

I. INSTRUCTIONS

A. Answer each interrogatory separately and fully in writing and under oath. In answering the interrogatories, furnish all information available to Everdry Marketing and Management, Inc., regardless of how that information was obtained, and regardless of whether such information may be hearsay. Include information known by, or in the possession of, Everdry Marketing and Management, Inc.; information known by, or in the possession of, its agents, employees, managers, members, officers, owners, or attorneys; and information appearing in its records.

B. If Everdry Marketing and Management, Inc. cannot answer the following interrogatories fully and completely after exercising due diligence to secure all requested information, then it must answer each to the extent possible, specifying its inability to answer the remainder, stating whatever information or knowledge it has concerning the unanswered portion, and detailing its attempts to secure the unknown information.

C. An interrogatory that seeks information contained in or about any document, or that seeks the identification of any document, may be answered by providing such document for inspection and copying, or by furnishing a copy of such document. In the event Everdry Marketing and Management, Inc. chooses to respond to any interrogatory by providing one or more documents, it must still answer the interrogatory by designating the specific documents responsive to the interrogatory.

D. The reply to each interrogatory should include attachments of as many pages as necessary to fully and completely respond, and should be identified by the number corresponding to each interrogatory as set forth below.

E. Any interrogatory or request propounded herein requesting information relating to any individual agent, employee, manager, member, officer, or owner of Everdry Marketing and Management, Inc. or any other entity seeks such information in furtherance of the Division's investigation of this matter pursuant to Indiana Code § 4-6-3-3, and therefore should not be objected to on the grounds that such person is or may be immune from liability for acts or representations described or referenced herein.

F. These interrogatories and requests for production shall be as broadly construed as possible to include all documents that may conceivably fall within their scope. Whenever appropriate, the singular form of a word shall be interpreted in the plural, and the plural in the singular. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests any documents which might otherwise be construed to be outside their scope. The masculine gender form shall be construed to include the feminine.

II. DEFINITIONS

As used in these Interrogatories, the following terms have the following meanings, unless otherwise defined by a specific interrogatory:

A. "Document" or "communication" includes any written, printed, typed, or other graphic or photographic representation or reproduction of any nature, any electronic representation or communication, and any audio or video recording in Everdry Marketing and Management, Inc.'s possession, custody, or control, or known by Everdry Marketing and Management, Inc. to exist or to have existed. All copies of documents containing any alterations or annotations, or that differ in any other way from the originals or copies referred to

in the preceding sentence, are deemed separate from the originals or copies, and should be included in any response.

B. "Identify", used in reference to a document or other communication, means to state:

1. the author or creator of the communication;
2. the recipient(s) of the communication;
3. the date of the communication; and
4. the type of communication (that is, letter, e-mail, telephone call, etc.).

C. "Identify", used in reference to a person, means to state:

1. the person's name;
2. the person's address;
3. the person's telephone number; and
4. all information Everdry Marketing and Management, Inc. possesses or possessed identifying the person.

D. "Person" includes any individual, corporation, partnership, group, association, government entity, or any other legal entity.

INTERROGATORIES

1. Identify all Indiana customers who have complained to Everdry Marketing and Management, Inc. regarding any aspect of their system installation, maintenance, warranty service or coverage, or the closure of Ross Management, Inc. or Miken Industries, Inc.

State Everdry Marketing and Management, Inc.'s response to each such complaining customer.

2. Describe in detail all activities Everdry Marketing and Management, Inc. has undertaken to ensure that customers purchasing products or services from an Everdry Marketing and Management, Inc. Indiana franchisee receive the benefits of the lifetime warranty provided to customers who purchased an Everdry waterproofing system despite the franchisee's actual or potential closure.

Also, identify the activities Everdry Marketing and Management, Inc. has undertaken to provide such warranty coverage to customers of Ross Management, Inc. and Miken Industries, Inc.

3. Describe in detail the circumstances surrounding Everdry Marketing and Management, Inc.'s termination of Ross Management, Inc.'s franchise.
4. Describe in detail the circumstances surrounding the termination of Miken Industries, Inc.'s Everdry Marketing and Management, Inc. franchise.
5. Describe in detail all actions Everdry Marketing and Management, Inc. has taken to seek another franchisor to take over the former territories of Ross Management, Inc. and Miken Industries, Inc.
6. Identify each document or other communication by which past and present customers have been or are notified that the warranty coverage for their waterproofing systems is provided solely by the Everdry Marketing and Management, Inc. franchisee that sold or installed the system.
7. State the amount of money Ross Management, Inc. was required to pay Everdry Marketing and Management, Inc. each year under the terms of the Everdry Marketing and Management, Inc. franchise agreement with Ross Management, Inc. State, too, whether this amount was calculated as a flat fee, whether it was based upon a percentage of sales, or whether it was calculated in some other way, and describe in detail the way in which the amount was calculated.
8. State the amount of money Miken Industries, Inc. was required to pay Everdry

Marketing and Management, Inc. each year under the terms of the Everdry Marketing and Management, Inc. franchise agreement with Miken Industries, Inc. State, too, whether this amount was calculated as a flat fee, whether it was based upon a percentage of sales, or whether it was calculated in some other way, and describe in detail the way in which the amount was calculated.

9. State the amount of money Everdry Marketing and Management, Inc. received from each contract between Ross Management, Inc. and an Indiana customer.
10. State what portion of each annual warranty fee paid by customers of Ross Management, Inc. is or was received by Everdry Marketing and Management, Inc.
11. State the amount of money Everdry Marketing and Management, Inc. received from each contract between Miken Industries, Inc. and an Indiana customer.
12. State what portion of each annual warranty fee paid by customers of Miken Industries, Inc. is or was received by Everdry Marketing and Management, Inc.
13. Identify all payments Everdry Marketing and Management, Inc. has received from Indiana customers who purchased products or services from Ross Management, Inc. or Miken Industries, Inc., and for each:
 - a) state the date of the payment;
 - b) identify the person making the payment;
 - c) identify the customer for whom the payment was made; and
 - d) state the purpose of the payment.
14. A. Identify all persons who have held Indiana franchises of Everdry Marketing and Management, Inc. For each:
 - 1) state and define the geographic region in which the franchisee had the rights to market and sell Everdry waterproofing systems;
 - 2) state the dates during which the franchisee held franchise rights;
 - 3) state the number of systems sold by the franchisee; and
 - 4) state whether there occurred any period of time during which no Everdry Marketing and Management, Inc. franchisee provided warranty service to customers in the region assigned to the franchisee that ceased operations ("non-coverage periods").B. For any non-coverage period:
 - 1) identify the date or dates of the period;
 - 2) identify all steps taken by Everdry Marketing and Management, Inc. to end the non-coverage period and obtain a service provider to service warranty or other requests of customers affected by the non-coverage period;
 - 3) state whether the non-coverage period ended so that customers affected by it received warranty services again; and

- 4) identify the person providing such continuing services.
- C. For any situation where a franchisee ceased operations without a non-coverage period resulting:
 - 1) describe in detail the continuing services provided;
 - 2) identify the person providing such continuing services;
 - 3) identify all customers receiving such continuing services; and
 - 4) state the date or dates the customers received such continuing services.
15. Identify all Indiana customers who have contacted Everdry Marketing and Management, Inc. in response to its internet web page located at www.everdry.com. Describe the actions Everdry Marketing and Management, Inc. took for each such customer contact.
16. Admit or deny that the attached exhibit A represents a true and accurate printed copy of the internet web page located at www.everdry.com/benefits/warranty.aspx. If Everdry Marketing and Management, Inc.'s answer to this interrogatory is anything other than an unconditional admission, it must describe in detail how exhibit A differs from any Everdry Marketing and Management, Inc. internet web page bearing similar information.
17. Identify the time period(s) during which Everdry Marketing and Management, Inc. has used the internet web page represented by exhibit A.
18. Identify all training, instruction, or direction Everdry Marketing and Management, Inc. has provided and provides to its franchisees regarding the following:
 - a) employee training;
 - b) waterproofing system installation;
 - c) waterproofing system selection;
 - d) customer service;
 - e) personnel;
 - f) accounting and finance activities;
 - g) marketing;
 - h) pricing; and
 - i) other business operations.
19. State the facts upon which Everdry Marketing and Management, Inc. contends that David R. Bowers "reopened the doors doing similar work and mold remediation under the name of Advanced Home Services," and that "he continued to collect and receive customer service fees after disenfranchisement," as these statements are made in the attached Exhibit B. In responding to this interrogatory, state specifically the information Everdry Marketing and Management, Inc. possesses, identify the person or persons from whom it received this information, state the date it received this information, and identify each Everdry Marketing and Management, Inc. employee or agent who received or knows of the information.

20. Describe in detail all means by which Everdry Marketing and Management, Inc. has monitored or monitors the activity and performance of its Indiana franchisees. Everdry Marketing and Management, Inc.'s response to this interrogatory should include, without limitation, information regarding franchisee reporting requirements, accounting and performance audits of franchisees, franchisee sales or performance standards or quotas, franchisor-franchisee disciplinary procedures, and Everdry Marketing and Management, Inc. "secret shopper" programs.

I affirm, under the penalties for perjury, that the above representations are true to the best of my knowledge and belief.

Everdry Marketing and Management, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

REQUESTS FOR PRODUCTION OF DOCUMENTS

INSTRUCTIONS

If Everdry Marketing and Management, Inc.'s response is that the documents requested are not in its possession or custody, it must describe in detail the unsuccessful efforts it made to locate the records. If Everdry Marketing and Management, Inc.'s response is that the requested documents are not in its control, it must identify who has control and the location of the records. If a request for production seeks a specific document or an itemized category which is not in Everdry Marketing and Management, Inc.'s possession, custody, or control, it must provide any documents it has that contain all or part of the information contained in the requested document or category. Identify the source of each of the documents produced.

1. Produce a copy of the franchise agreement between: a) Everdry Marketing and Management, Inc. and Ross Management, Inc. d/b/a Everdry Waterproofing of Indianapolis and b) Everdry Marketing and Management, Inc. and Miken Industries, Inc. d/b/a Everdry Waterproofing of Fort Wayne.
2. Produce all documents consisting of, containing, or related to the termination of Ross Management, Inc.'s franchise rights granted by Everdry Marketing and Management, Inc.
3. Produce all documents consisting of, containing, or related to the termination of Miken Industries, Inc.'s franchise rights granted by Everdry Marketing and Management, Inc.
4. Produce all records consisting of, containing, or related to payments from Ross Management, Inc. to Everdry Marketing and Management, Inc.
5. Produce all records consisting of, containing, or related to payments from Miken Industries, Inc. to Everdry Marketing and Management, Inc.
6. Produce all documents consisting of, containing, or related to potential or existing problems with Everdry Marketing and Management, Inc. Indiana franchisees, including, without limitation, customer complaints and Everdry Marketing and Management, Inc. assessment or investigative reports of franchisees.

7. Produce a representative sample of each document by which past and present customers have been or are notified that the warranty coverage for their waterproofing systems is provided solely by the Everdry Marketing and Management, Inc. franchisee that sold or installed the system.
8. Produce all operating manuals, instructional material, tests, guidance documents, or other instructional or guidance material Everdry Marketing and Management, Inc. has provided to Ross Management, Inc.
9. Produce all operating manuals, instructional material, tests, guidance documents, or other instructional or guidance material Everdry Marketing and Management, Inc. has provided to Miken Industries, Inc.
10. Produce all documents consisting of, containing, or related to Everdry Marketing and Management, Inc.'s discussions with David R. Bowers, referred to in the statement "[t]he termination came after months of talking with Bowers regarding servicing customers, agency complaints and failure to pay" of the attached Exhibit B.
11. Produce all documents consisting of, containing, or related to any design or material specification flaw, installation or service procedure flaw, or other flaw, deficiency or defect related to the Everdry waterproofing system.